

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ELLA M. ABEYTA)	
Claimant)	
VS.)	
)	
ELITE PROFESSIONALS, INC.)	Docket No. 160,430
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

The applications of both claimant and respondent for review by the Workers Compensation Appeals Board of the Award of Special Administrative Law Judge William F. Morrissey dated February 13, 1997, came on for consideration.

APPEARANCES

The claimant appeared by and through her attorney, Jan L. Fisher, of Topeka, Kansas. The respondent and its insurance carrier appeared by and through their attorney, Bret C. Owen, of Topeka, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record as specifically set forth in the Award of the Special Administrative Law Judge is herein adopted by the Appeals Board. The stipulations as specifically set forth in the Award of the Special Administrative Law Judge are herein adopted by the Appeals Board. In addition, the Appeals Board considered the stipulation of the parties filed with the Division of Workers Compensation on October 25, 1996.

ISSUES

- (1) Whether the Special Administrative Law Judge erred in calculating the award, having failed to take into consideration the stipulation filed by the parties on October 25, 1996, concerning temporary total disability compensation, temporary partial disability compensation, the weeks remaining on the award, and a credit to respondent for an overpayment of benefits.
- (2) The nature and extent of claimant's injury and/or disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

Respondent asserts the Special Administrative Law Judge erred in calculating the award, having failed to consider the stipulation filed by the parties with the Division of Workers Compensation on October 25, 1996. The stipulation in question specified the amount of temporary disability compensation paid, totaling \$27,547.79, with this amount comprising both temporary total and temporary partial disability payments. The payments were made at a weekly rate of \$289.00, based on a stipulated average weekly wage of \$360.00. This constitutes an overpayment of weekly benefits in the amount of \$48.99 per week in excess of the \$240.01 due and owing as temporary disability compensation. The stipulation also indicated a credit would be due to respondent and its insurance carrier in the amount of \$4,669.73 and that there were 319.68 weeks remaining on the award. Claimant, in her submission letter to the Administrative Law Judge, acknowledged no additional weeks of temporary total disability compensation or temporary partial disability compensation were claimed. The Appeals Board, in computing the final award, will take into consideration this stipulation of the parties as filed with the Division of Workers Compensation.

The Appeals Board will next consider the nature and extent of claimant's injury and/or disability.

The Award of the Special Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Special Administrative Law Judge are accurate and appropriate and, with the exception of the above indicated modifications, the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

Claimant contends the Special Administrative Law Judge, in awarding a 30 percent permanent partial general body work disability, underestimated the claimant's actual disability. Claimant argues that a more appropriate award would be approximately 42 percent to the body as a whole. Respondent, on the other hand, argues the award is too high, alleging an approximate 21 percent whole body work disability award would be more appropriate. In considering the opinions of both vocational rehabilitation experts, the Special Administrative Law Judge found no reason to place greater emphasis upon the opinion of one over that of

the other and gave equal weight to the vocational opinions. The Appeals Board acknowledges a perfect opinion was not rendered by either of the experts in this matter. However, both experts, in rendering their opinions, had the opportunity to consider the medical opinions of David E. Nonweiler, M.D., P. Brent Koprivica, M.D., and Edward J. Prostic, M.D.

It is the function of the trier of facts to decide which testimony is more accurate and/or credible, and to adjust the medical testimony along with the testimony of claimant and any other testimony which may be relevant to the question of disability. Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d, 212 (1991)

The Appeals Board finds in considering the opinions of all the health care providers and vocational experts that claimant is entitled to a 30 percent permanent partial general body work disability for the injuries suffered on November 11, 1991.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Special Administrative Law Judge William F. Morrissey, dated February 13, 1997, should be, and is hereby modified in part and affirmed in part and an award is granted in favor of claimant, Ella M. Abeyta, and against respondent, Elite Professionals, Inc., and its insurance carrier, Travelers Insurance Company, for an accidental injury occurring on November 11, 1991. Claimant is granted an award based upon an average weekly wage of \$360.00 for 95.32 weeks temporary total and converted temporary partial disability compensation at the rate of \$240.01 per week in the amount of \$22,877.75 followed thereafter by 319.68 weeks permanent partial disability compensation at the rate of \$72.00 per week in the amount of \$23,016.96 for a total award of \$45,894.71.

As of July 1, 1997, there would be due and owing claimant 95.32 weeks of temporary total and converted temporary partial disability compensation at the rate of \$240.01 per week or \$22,877.75, followed by 198.82 weeks of permanent partial disability compensation at the rate of \$72.00 per week in the sum of \$14,315.04 for a total due and owing of \$37,192.79, which is ordered paid in one lump sum less any amounts previously paid. Respondent is entitled a credit of \$4,669.73 as overpayment on temporary total disability compensation and temporary partial disability compensation pursuant to the stipulation of the parties. Thereinafter, claimant is entitled to 120.86 weeks permanent partial disability compensation at the rate of \$72.00 per week in the amount of \$8,701.92 until fully paid or further order of the Director.

Future medical benefits are awarded upon proper application to and approval by the Director.

Unauthorized medical expenses of up to \$350.00 are ordered paid on behalf of claimant upon presentation of an itemized statement verifying same.

Claimant's attorney fee contract is approved in so far as it is not inconsistent with K.S.A. 44-536.

Fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against respondent and its insurance carrier to be paid as follows:

William F. Morrissey Special Administrative Law Judge	\$150.00
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Curtis, Schloetzer, Hedberg, Foster & Associates	
Transcript of Preliminary Hearing	\$263.20
Transcript of Preliminary Hearing	\$159.45
Deposition of Ella M. Abeyta	\$276.50
Deposition of Michael Dreiling	\$367.50
Deposition of P. Brent Koprivica, M.D.	\$175.00

Fowler Court Reporting Deposition of Nancy Andrews	Unknown
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Appino & Biggs Reporting Service	
Transcript of Regular Hearing	\$164.00
Deposition of Richard Santner	\$290.85

Patricia Walker CSR Deposition of David E. Nonweiler, M.D.	Unknown
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Gene Dolginoff Associates, Ltd. Deposition of Edward J. Prostic, M.D.	\$246.75
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Nora Lyon & Associates Transcript of Preliminary Hearing	\$196.80
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IT IS SO ORDERED.

Dated this ____ day of August 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jan L. Fisher, Topeka, KS.
Bret C. Owen, Topeka, KS.

Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director